

LEGAL UPDATE

DOL Proposes to Rescind the FLSA Joint Employer Determination Rule

On March 11, 2021, the U.S. Department of Labor (DOL) announced a proposal to rescind the 2020 Joint Employer Determination Rule (the Rule). Joint employment or co-employment situations arise when two or more organizations share the control and supervision of one or more employees.

Joint employers are equally and individually responsible for compliance with labor and employment laws, including the Fair Labor Standards Act (FLSA). The DOL looks at joint employment situations to prevent scenarios where one employer uses another as a “shield” to avoid compliance obligations.

Rescinding the Rule

The DOL has proposed rescinding this Rule because it determined the Rule goes against longstanding agency interpretations and court rulings. The DOL has stated that the Rule requires using a test that is “unduly narrow” and that withdrawing it would “improve well-being and economic security” by providing stronger protections for workers.

The DOL also considered that, in 2020, 17 states and the District of Columbia filed a lawsuit challenging the validity of the Rule. The court vacated the majority of the Rule, stating that it was “contrary to the FLSA” and “arbitrary and capricious” because it failed to explain why the Rule deviated from prior guidance on the subject.

Impact on Employers

At this stage, rescission of the Rule has only been proposed and is not final. The DOL will consider public commentary on this matter until April 12, 2021.

As a result, the Rule is still in effect and employers must continue to comply with the Rule. However, employers are encouraged to continue to monitor DOL communications for any developments on this proposal.

Important Dates

March 16, 2020

Joint employer rule became effective.

Sept. 8, 2020

Federal District Court for the Southern District of New York vacated part of the joint employer rule.

March 11, 2021

DOL announced proposal to rescind the entire joint employer rule.

The DOL has stated that the Rule requires using a test that is “unduly narrow” and that withdrawing it would provide stronger protections for workers.



JP Griffin Group

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